

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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| IN RE PHARMACEUTICAL INDUSTRY |) | |
| AVERAGE WHOLESALE PRICE |) | MDL NO. 1456 |
| LITIGATION |) | Civil Action No. 01-12257-PBS |
| |) | Subcategory No: 03-10643 |
| |) | |
| |) | Judge Patti B. Saris |
| |) | |
| THIS DOCUMENT RELATES TO: |) | |
| |) | |
| <i>City of New York v. Abbott Labs., et al.</i> |) | |
| (S.D.N.Y. No. 04-CV-06054) |) | |
| <i>County of Suffolk v. Abbott Labs., et al.</i> |) | |
| (E.D.N.Y. No. 03-CV-229) |) | |
| <i>County of Westchester v. Abbott Labs., et al.</i> |) | |
| (S.D.N.Y. No. 03-CV-6178) |) | |
| <i>County of Rockland v. Abbott Labs., et al.</i> |) | |
| (S.D.N.Y. No. 03-CV-7055) |) | |
| <i>County of Dutchess v. Abbott Labs., et al.</i> |) | |
| (S.D.N.Y. No. 05-CV-06458) |) | |
| <i>County of Putnam v. Abbott Labs., et al.</i> |) | |
| (S.D.N.Y. No. 05-CV-04740) |) | |
| <i>County of Washington v. Abbott Labs., et al.</i> |) | |
| (N.D.N.Y. No. 05-CV-00408) |) | |
| <i>County of Rensselaer v. Abbott Labs., et al.</i> |) | |
| (N.D.N.Y. No. 05-CV-00422) |) | |
| <i>County of Albany v. Abbott Labs., et al.</i> |) | |
| (N.D.N.Y. No. 05-CV-00425) |) | |

[Caption Continues on Next Page]

**DEFENDANTS' JOINT MOTION FOR
SUMMARY JUDGMENT ON PLAINTIFFS' "FUL FRAUD" CLAIMS**

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| <i>County of Warren v. Abbott Labs., et al.</i> |) |
| (N.D.N.Y. No. 05-CV-00468) |) |
| <i>County of Greene v. Abbott Labs., et al.</i> |) |
| (N.D.N.Y. No. 05-CV-00474) |) |
| <i>County of Saratoga v. Abbott Labs., et al.</i> |) |
| (N.D.N.Y. No. 05-CV-00478) |) |
| <i>County of Columbia v. Abbott Labs., et al.</i> |) |
| (N.D.N.Y. No. 05-CV-00867) |) |
| <i>Essex County v. Abbott Labs., et al.</i> |) |
| (N.D.N.Y. No. 05-CV-00878) |) |
| <i>County of Chenango v. Abbott Labs., et al.</i> |) |
| (N.D.N.Y. No. 05-CV-00354) |) |
| <i>County of Broome v. Abbott Labs., et al.</i> |) |
| (N.D.N.Y. No. 05-CV-00456) |) |
| <i>County of Onondaga v. Abbott Labs., et al.</i> |) |
| (N.D.N.Y. No. 05-CV-00088) |) |
| <i>County of Tompkins v. Abbott Labs., et al.</i> |) |
| (N.D.N.Y. No. 05-CV-00397) |) |
| <i>County of Cayuga v. Abbott Labs., et al.</i> |) |
| (N.D.N.Y. No. 05-CV-00423) |) |
| <i>County of Madison v. Abbott Labs., et al.</i> |) |
| (N.D.N.Y. No. 05-CV-00714) |) |
| <i>County of Cortland v. Abbott Labs., et al.</i> |) |
| (N.D.N.Y. No. 05-CV-00881) |) |
| <i>County of Herkimer v. Abbott Labs. et al.</i> |) |
| (N.D.N.Y. No. 05-CV-00415) |) |
| <i>County of Oneida v. Abbott Labs., et al.</i> |) |
| (N.D.N.Y. No. 05-CV-00489) |) |
| <i>County of Fulton v. Abbott Labs., et al.</i> |) |
| (N.D.N.Y. No. 05-CV-00519) |) |
| <i>County of St. Lawrence v. Abbott Labs., et al.</i> |) |
| (N.D.N.Y. No. 05-CV-00479) |) |
| <i>County of Jefferson v. Abbott Labs., et al.</i> |) |
| (N.D.N.Y. No. 05-CV-00715) |) |
| <i>County of Lewis v. Abbott Labs., et al.</i> |) |
| (N.D.N.Y. No. 05-CV-00839) |) |
| <i>County of Chautauqua v. Abbott Labs., et al.</i> |) |
| (W.D.N.Y. No. 05-CV-06204) |) |
| <i>County of Allegany v. Abbott Labs., et al.</i> |) |
| (W.D.N.Y. No. 05-CV-06231) |) |
| <i>County of Cattaraugus v. Abbott Labs., et al.</i> |) |
| (W.D.N.Y. No. 05-CV-06242) |) |

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| <i>County of Genesee v. Abbott Labs., et al.</i> |) |
| (W.D.N.Y. No. 05-CV-06206) |) |
| <i>County of Wayne v. Abbott Labs., et al.</i> |) |
| (W.D.N.Y. No. 05-CV-06138) |) |
| <i>County of Monroe v. Abbott Labs., et al.</i> |) |
| (W.D.N.Y. No. 05-CV-06148) |) |
| <i>County of Yates v. Abbott Labs., et al.</i> |) |
| (W.D.N.Y. No. 05-CV-06172) |) |
| <i>County of Niagara v. Abbott Labs., et al.</i> |) |
| (W.D.N.Y. No. 05-CV-06296) |) |
| <i>County of Seneca v. Abbott Labs., et al.</i> |) |
| (W.D.N.Y. No. 05-CV-06370) |) |
| <i>County of Orleans v. Abbott Labs., et al.</i> |) |
| (W.D.N.Y. No. 05-CV-06371) |) |
| <i>County of Ontario v. Abbott Labs., et al.</i> |) |
| (W.D.N.Y. No. 05-CV-06373) |) |
| <i>County of Schuyler v. Abbott Labs., et al.</i> |) |
| (W.D.N.Y. No. 05-CV-06387) |) |
| <i>County of Steuben v. Abbott Labs., et al.</i> |) |
| (W.D.N.Y. No. 05-CV-06223) |) |
| <i>County of Chemung v. Abbott Labs., et al.</i> |) |
| (W.D.N.Y. No. 05-CV-06744) |) |
| AND |) |
| <i>County of Nassau v. Abbott Labs., et al.</i> |) |
| (E.D.N.Y. No. 04-CV-5126) |) |
| |) |

Pursuant to Federal Rule of Civil Procedure 56, defendants respectfully move this Court for the entry of summary judgment in their favor as to all claims that New York Medicaid reimbursed (or could have reimbursed) on the basis of Federal Upper Limits (“FULs”). As set forth in Defendants’ Memorandum of Law in Support of Their Joint Motion for Summary Judgment on Plaintiffs’ “FUL Fraud” Claims, plaintiffs cannot meet their burden of establishing causation or liability with respect to these claims.

In support of their motion, defendants submit herewith: (i) Defendants’ Memorandum of Law in Support of Their Joint Motion for Summary Judgment on Plaintiffs’ “FUL Fraud” Claims; (ii) Defendants’ Local Rule 56.1 Statement of Undisputed Material Facts Supporting Defendants’ Joint Motion for Summary Judgment on Plaintiffs’ “FUL Fraud” Claims; (iii)

Declaration of Kim B. Nemirow Transmitting Deposition Testimony and Hearing Transcripts Relied Upon in Support of Defendants' Joint Motion for Summary Judgment on Plaintiffs' "FUL Fraud" Claims; (iv) Affidavit of Dr. Sumanth Addanki; and (v) Affidavit of Cesar A. Perales.

WHEREFORE, defendants respectfully request that their Joint Motion for Summary Judgment on Plaintiffs' "FUL Fraud" Claims be GRANTED.

Respectfully submitted,

/s/ John P. Bueker
John T. Montgomery (BBO#352220)
John P. Bueker (BBO#636435)
Kim B. Nemirow (BBO# 663258)
ROPES & GRAY LLP
One International Place
Boston, Massachusetts 02110-2624
(617) 951-7000

On Behalf of All Defendants

Dated: May 15, 2009

CERTIFICATE OF COMPLIANCE WITH LR 7.1

I hereby certify that on behalf of all Defendants, counsel for Schering-Plough Corporation, Schering Corporation, and Warrick Pharmaceuticals Corporation has conferred with counsel for Plaintiffs in a good faith effort to resolve or narrow the issues set forth herein, and that Plaintiffs' counsel has indicated that Plaintiffs do not assent to this motion.

/s/ Kim B. Nemirow
Kim B. Nemirow

CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2009, I caused a true and correct copy of the foregoing to be served on all counsel of record by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL 1456.

/s/ Kim B. Nemirow
Kim B. Nemirow